

Fresno, California

February 16, 2012

The City Council met in regular session at the hour of 1:00 p.m. in the Council Chamber, City Hall, on the day above written.

Present:	Oliver Baines III	Councilmember
	Andreas Borgeas	Councilmember
	Lee Brand	Councilmember
	Sal Quintero	Councilmember
	Larry Westerlund	Councilmember
	Blong Xiong	Acting Council President
	Clinton Olivier	Council President

Mark Scott, City Manager
Bruce Rudd, Assistant City Manager
Jim Sanchez, City Attorney
Yvonne Spence, City Clerk
Yolanda Salazar, Assistant City Clerk

An invocation was given and President Olivier led the Pledge of Allegiance.

PROCLAMATION OF “TEEN DATING VIOLENCE AWARENESS MONTH”

Read and presented.

PROCLAMATION OF “CENTRAL VALLEY FREEDOM WEEK”

Read and presented.

APPROVE MINUTES OF FEBRUARY 9, 2012:

On motion of Councilmember Quintero, seconded by Councilmember Brand, duly carried, RESOLVED, the City Council minutes of February 9, 2012, approved as submitted.

COUNCIL MEMBER REPORTS AND COMMENTS:

Councilmember Xiong stated he has had some difficulty scheduling a meeting with FAX staff regarding Route 39, with ACM Rudd stating he would make arrangements for that meeting to occur and added staff was going to provide some additional analysis on the impact of that change as well as other changes.

Councilmember Quintero (1) thanked ACM Rudd and code enforcement for addressing the street vendor issue in his district; and (2) commented on the successful 28th Annual Dixieland Society event at the Radisson Hotel which he stated sold out that hotel and others along with the Tulare show, and added his friend, Leon, opened up his new restaurant, The Downtown Hofbrau, which had good crowd participation and encouraged all to visit the restaurant.

Councilmember Westerlund thanked everyone for their best wishes upon the birth of his son, William Lawrence, last Thursday, and added that was why he hurriedly left last week’s meeting.

Councilmember Xiong left the meeting briefly at 1:26 p.m.

APPROVE AGENDA:

(1:30 P.M.) RESOLUTION - AMENDING THE COUNCIL RESIDENCY ACT POLICY (RESOLUTION NO. 2010-197)

City Clerk Spence advised the resolution was (*) subject to the Mayor's veto, which was not noted on the agenda.

(2:00 P.M.) HEARING TO CONSIDER THE FORMATION OF A SPECIAL TAX DISTRICT (COMMUNITY FACILITIES DISTRICT NO. 16) FOR THE MAINTENANCE OF CERTAIN PUBLIC IMPROVEMENTS ASSOCIATED WITH THE UNIVERSALLY ACCESSIBLE PARK

#1 RESOLUTION – ESTABLISHING THE SPECIAL TAX DISTRICT (CFD NO. 16), DETERMINING THE VALIDITY OF PRIOR PROCEEDINGS, AND TAKING RELATED ACTIONS

#2 RESOLUTION – CALLING A SPECIAL MAILED BALLOT ELECTION AND SETTING THE ELECTION DAY FOR APRIL 16, 2012

City Clerk Spence advised the hearing was being continued two weeks, and subsequently announced the date and time would be March 1, 2012, at 2:00 p.m.

On motion of Councilmember Westerlund, seconded by President Olivier, duly carried, RESOLVED, the **AGENDA** hereby approved, as amended, by the following vote:

Ayes	:	Baines, Borgeas, Brand, Quintero, Westerlund, Olivier
Noes	:	None
Absent	:	Xiong

Councilmember Xiong returned to the meeting at 1:29 p.m.

ADOPT CONSENT CALENDAR:

(1-A) RESOLUTION NO. 2012-22 – INTENT TO ANNEX FINAL PARCEL MAP NO. 2010-09, ANNEXATION NO. 2, TO CFD NO. 9, NORTHEAST CORNER OF N. BLYTHE AND W. ASHLAN AVENUES, AND TO AUTHORIZE THE LEVY OF SPECIAL TAXES

(1-B) APPROVE THE APPOINTMENTS OF ROBERT MACIAS TO THE HISTORIC PRESERVATION COMMISSION (MAYOR SWEARENGIN), AND KARLA MARTINEZ TO THE TRANSIT RATE AND SERVICE COMMITTEE (COUNCILMEMBER QUINTERO)

(1-C) RESOLUTION NO. 2012-23 – APPROVING THE FINAL MAP OF TRACT NO. 5973 LOCATED ON THE NORTH SIDE OF E. CLUBHOUSE DRIVE BETWEEN N. ALICANTE AND N. KNOTTING HILL DRIVE, AND ACCEPTING THE DEDICATED PUBLIC USES THEREIN; AND AUTHORIZING THE PUBLIC WORKS DIRECTOR, THE PUBLIC UTILITIES DIRECTOR, AND THE DARM DIRECTOR, OR DESIGNEES, TO EXECUTE THE NECESSARY DOCUMENTS ON BEHALF OF THE CITY

(1-D) APPROVE A REIMBURSEMENT AGREEMENT WITH THE FRESNO METROPOLITAN FLOOD CONTROL DISTRICT (FMFCD) FOR THE INSTALLATION OF MASTER PLAN FACILITIES ALONG THE VETERANS HOME FRONTAGE AT CALIFORNIA AND MARKS AVENUES; AND AUTHORIZE THE PUBLIC WORKS DIRECTOR, OR DESIGNEE, TO SIGN THE AGREEMENT ON BEHALF OF THE CITY

(1-E) ACTIONS RELATING TO THE FRESNO STREET AND EL PASO AVENUE INSTALLATION OF 14" WATER MAIN PROJECT

#1 ADOPT FINDING OF CLASS 3 CATEGORICAL EXEMPTION PURSUANT TO CEQA

#2 AWARD A CONSTRUCTION CONTRACT TO WEST VALLEY CONSTRUCTION COMPANY OF SAN JOSE, CA, IN THE AMOUNT OF \$194,213, AND AUTHORIZE THE PUBLIC WORKS DIRECTOR, OR DESIGNEE, TO SIGN THE CONTRACT ON BEHALF OF THE CITY

(1-F) APPROVE ACCEPTANCE OF PROPOSITION 40 ROBERTI-Z'BERG-HARRIS – BLOCK GRANT CONTRACT EXTENSION FROM THE STATE OF CALIFORNIA DEPARTMENT OF PARKS AND RECREATION IN THE AMOUNT OF \$211,856; AND AUTHORIZE THE PARCS DIRECTOR OR DESIGNEE TO EXECUTE AND SUBMIT ALL NECESSARY DOCUMENTS, SUBJECT TO PRIOR APPROVAL AS TO FORM BY THE CITY ATTORNEY'S OFFICE

(1-G) AUTHORIZE THE DIRECTOR OF AVIATION TO EXECUTE AMENDMENT NO. 2 WITH ERM REMEDIATION & CONSTRUCTION MANAGEMENT WEST, INC. (ERM WEST) IN AN AMOUNT NOT TO EXCEED \$299,200, TO PROVIDE PROFESSIONAL ENGINEERING, ENVIRONMENTAL AND REMEDIAL ACTIONS CONCERNING GROUNDWATER CONTAMINATION EMANATING FROM FRESNO YOSEMITE INTERNATIONAL AIRPORT (FYI)

(1-H) RESOLUTION NO. 2012-24 – REVISING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR FEDERALLY ASSISTED CONTRACTS TO COMPLY WITH RECENT CHANGES TO FEDERAL REGULATIONS, AND RESCINDING RES. 2000-248

On motion of Councilmember Quintero, seconded by Councilmember Brand, duly carried, RESOLVED, the above entitled **CONSENT CALENDAR** hereby adopted, by the following vote:

Ayes : Baines, Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes : None
Absent : None

(2:00 P.M.) HEARING TO CONSIDER THE FORMATION OF A SPECIAL TAX DISTRICT (CFD NO. 16) FOR THE MAINTENANCE OF CERTAIN PUBLIC IMPROVEMENTS ASSOCIATED WITH THE UNIVERSALLY ACCESSIBLE PARK
(Continued from earlier wherein the hearing was continued two weeks)

At this point City Clerk Spence advised the hearing would be continued to March 1, 2012, at 2:00 p.m.

(1:15 p.m. 'A') ACTIONS RELATING TO THE SHAW AVENUE INTELLIGENT TRANSPORTATION SYSTEMS (ITS) – STATE ROUTE 99 TO STATE ROUTE 41 PROJECT

#1 ADOPT FINDING OF A CATEGORICAL EXEMPTION PURSUANT TO CEQA

#2 AWARD A CONTRACT FOR THE PROJECT TO AUDEAMUS DBA SEBASTIAN IN THE AMOUNT OF \$3,414,199

Professional Engineer Yang reviewed the issue and recommended approval, all as contained in the staff report as submitted.

Councilmember Westerlund spoke in support of the issue and thanked staff for their continued work stating this was an important project, and made a motion to approve.

On motion of Councilmember Westerlund, seconded by Councilmember Xiong, duly carried, RESOLVED, the subject CEQA finding hereby adopted, and the contract for the project awarded to Audeamus DBA Sebastian as recommended, by the following vote:

Ayes : Baines, Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes : None
Absent : None

(1:15 p.m. 'B') ACTIONS RELATING TO THE TED C. WILLS REHABILITATION PROJECT

#1 RESOLUTION NO. 2012-25 – ACCEPTING A GRANT OF \$849,500 FROM THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT HOUSING RELATED PARK PROGRAM (PROPOSITION 1C), AND AUTHORIZING THE CITY MANAGER/INTERIM PARCS DIRECTOR TO SUBMIT ALL NECESSARY DOCUMENTS

#2 RESOLUTION NO. 2012-26 – 46TH AMENDMENT TO AAR 2011-133 APPROPRIATING \$550,000 OF PROPOSITION 1C FUNDS INTO THE PARCS DEPARTMENT BUDGET FOR THE REHABILITATION PROJECT

#3 ADOPT CEQA FINDING THAT THE TED C. WILLIS REHABILITATION PROJECT WAS ENVIRONMENTALLY ASSESSED UNDER EA-P-2009-02 AND THAT A MITIGATED NEGATIVE DECLARATION WAS PROPERLY ADOPTED THAT NO NEW INFORMATION OR CIRCUMSTANCES EXIST OR CHANGE PROPOSED THAT WOULD REQUIRE NEW OR ADDITIONAL ENVIRONMENTAL WORK

#4 AWARD A CONSTRUCTION CONTRACT FOR THE PROJECT, INCLUDING THE BASE BID PLUS ADD ALTERNATES 1, 2, 3, 4, 5, 6 AND 7, TO MCC CONSTRUCTION CORPORATION IN THE AMOUNT OF \$827,318

PARCS Administrative Manager Norris reviewed the issue and recommended approval, all as contained in the staff report as submitted. Councilmember Baines congratulated staff for their work on this project and made a motion to approve.

On motion of Councilmember Baines, seconded by Councilmember Westerlund, duly carried, RESOLVED, the above entitled Resolution Nos. 2012-25 and 2012-26 hereby adopted, the subject CEQA finding adopted, and a construction contract for the project awarded to MCC Construction Corporation (Fresno) as recommended, by the following vote:

Ayes : Baines, Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes : None
Absent : None

(1:30 P.M.) RESOLUTION NO. 2012-27 - AMENDING THE COUNCIL RESIDENCY ACT POLICY (RESOLUTION NO. 2010-197) AS AMENDED, CHANGING THE EFFECTIVE DATE TO MARCH 14, 2012

Councilmember Brand reviewed the issue and the four proposed amendments, all as contained in his report to Council as submitted, and made a motion to approve, which motion was seconded by Councilmember Baines.

Randall Reed, 1130 W. Fremont, stated as a candidate for Council District 2 he fully complied with existing rules which were not difficult or onerous at all, and stated the filing period for candidates had already begun, the timing of this was a little curious, and requested, if the amendments are approved, that the start of any month-to-month rental agreement and a utility service include a specific date.

Upon question of Councilmember Xiong Councilmember Brand stated proof of both home ownership and a utility service proof was necessary because a person could pay a PG&E bill for a particular address but that was not proof they lived there **(2 – 0)**, and brief discussion ensued. Councilmember Xiong stated he felt the signed residency affidavit was adequate proof and although he supported establishing the ‘Act’ to see how it went he found this process to be a little more cumbersome than anticipated for his public service commitment. Councilmember Borgeas stated he also experienced some of what Councilmember Xiong did but felt the intention was what counted; spoke briefly to the issue of redacting information; and relative to Mr. Reed’s comments stated he agreed the sheer timing of this was a little curious, questioned if these changes could impact any person(s) in this election, and suggested the changes not become effective until after the election cycle ends which was March 14th. Councilmember Brand stated he had no problem with that and brief discussion ensued.

On motion of Councilmember Brand, seconded by Councilmember Baines, duly carried, RESOLVED, the above entitled Resolution No. 2012-27 hereby adopted, as amended, changing the effective date to March 14, 2012, by the following vote:

Ayes : Baines, Borgeas, Brand, Quintero, Westerlund, Xiong, Olivier
Noes : None
Absent : None

CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL:

(‘A’) EXISTING LITIGATION – CASE NAMES:

#1 CITY OF FRESNO V. CHEVRON USA, ET AL.

#2 CITY OF FRESNO V. AIG FINANCIAL PRODUCTS CORP., ET AL

(‘B’) DECIDING WHETHER TO INITIATE LITIGATION – CASE NAME: CITY OF FRESNO V. DAE SONG AND SOOK KYUNG LEE, SONG HO AND EUN MIN KIM, NAM HO AND SUN SIL PAIK (GOTTSCHALKS BUILDING)

(‘C’) DECIDING WHETHER TO INITIATE OR INTERVENE IN LITIGATION – CASE NAME: CITY OF FRESNO V. STATE OF CALIFORNIA, AUDITOR-CONTROLLER OF THE COUNTY OF FRESNO, AND REAL PARTY IN INTEREST SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF CITY OF FRESNO/REDEVELOPMENT AGENCY OF THE CITY OF FRESNO; AND CITY OF CERRITOS V. STATE OF CALIFORNIA, ET AL., SACRAMENTO SUPERIOR COURT CASE (*LAID OVER)

(‘D’) ANTICIPATED LITIGATION/SIGNIFICANT EXPOSURE TO LITIGATION/POTENTIAL LITIGATION: DARLING INTERNATIONAL, INC., V. CITY OF FRESNO

Speaking to Item ‘D’ were Booker Lewis, 812 S. Douglas, Pastor of Rising Star Missionary Baptist Church, President of West Fresno Faith-Based Organization, Board member of Fresno Metro Ministries, and active member of West Fresno Alliance and Concerned Citizens of West Fresno; Patience Milrod, 844 N. Van Ness Avenue, representing numerous residents in the vicinity of the Darling plant; and Sarah Sharpe, Fresno Metro Ministries Environmental Health Program, 144 E. Weldon, on behalf of constituencies and collaborations throughout the city, who thanked the city for facilitating mediation, stated the community would remain unwavering in their resolve to eliminate the nuisance and possible health risks of Darling despite Darling’s efforts to lobby the city and the community, a lot was learned in mediation, and they looked forward to completing the 90-day good-faith process and hearing the outcome.

UNSCHEDULED COMMUNICATION:

Sherry Smith, 4724 W. Swift, spoke to (#1) the new park being built in District 1 and expressed concern about the special tax for the park, stated if there is going to be a tax all parks should be taxed, and stated the city should not tax a community that has not had a park in 31 years; and (#2) the proclamation this morning about human trafficking and her concern with the movement of prostitutes from Blackstone to Parkway and the west of Freeway 99 area.

CLOSED SESSION – CONFERENCE WITH LEGAL COUNSEL:

The City Council met in closed session in Room 2125 at the hour 2:10 p.m. to consider the above items as announced earlier by City Attorney Sanchez. *Item ‘C’ was laid over.

CLOSED SESSION ANNOUNCEMENT:

City Attorney Sanchez announced in the matter of Item ‘B’, COF v. Song, et al., (Gottschalks Building), Council voted 6-0 with Councilmember Brand absent to direct staff to initiate litigation based on breach of contract and unlawful detainer.

ADJOURNMENT

There being no further business to bring before the City Council, the hour of 4:50 p.m. having arrived and hearing no objection, President Olivier declared the meeting adjourned.

Approved on the ____1st____ day of ____March____, 2012.

_____/s/_____
Clinton Olivier, Council President

ATTEST: _____/s/_____
Yolanda Salazar, Assistant City Clerk